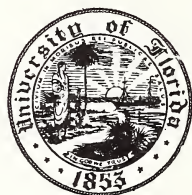


Law of Florida
Relating to the Assessment, Collection
Motor Fuel Taxes

by
Ray E. Green

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CHAPTER 207

MOTOR FUELS, ETC.; REGULATION; DISTRIBUTORS; OTHER PERSONS

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207.01 Definitions.—The following words, terms and phrases used in this section are for the purpose hereof defined as follows:

(1) "Motor Fuel" shall mean and include gasoline or other like products of petroleum and any and all liquid fuels or products of petroleum which are now or hereafter subjected to a tax computed by or measured by or based upon the sale, use, consumption, or distribution of said liquid fuels or products of petroleum.

(2) "Kerosene" shall include the ordinary household petroleum oil used with wick burners for illuminating, heating and cooking purposes.

(3) "Public Highways" shall mean and include every way or place, of whatever nature generally open to the use of the public as a matter of right, for the purpose of vehicular travel, and notwithstanding that the same shall have been temporarily closed for the purpose of construction, reconstruction, maintenance or repair.

(4) "Person" shall mean and include natural persons, corporations, copartnerships, firms, companies, agencies or associations, counties, municipalities or other political subdivisions of this state, singular or plural.

(5) "Distributor" shall include any person, association of persons, firm, corporation, municipalities and political subdivisions of this state:

(a) That imports or causes to be imported and sells at wholesale or retail, or otherwise within this state, any of the motor fuel as specified above; or

(b) That imports or causes to be imported, and withdraws for use within this state by himself, or others, any such fuels, from the tank car, truck, or other original container, or package in which imported into this state; or

(c) That manufactures, refines, produces, or compounds any such fuels within this state, and sells the same at wholesale or retail or otherwise within this state for use or consumption within this state.

(d) That imports into this state from any other state or foreign country or shall receive by any means into this state, and keep in storage in this state for a period of twenty-four (24) hours, or more after the same shall lose interstate character as a shipment in interstate commerce, any motor fuel which is intended to be used for consumption in this state.

(e) That are primarily liable under the motor fuel tax laws of this state for the payment of motor fuel taxes.

(f) That was holding, on January 1, 1953, an uncanceled license issued by the comptroller of the state to engage in business as a distributor of motor fuel.

(g) That purchases or receives in this state gasoline in bulk quantities for resale to retail dealers, upon which the tax has not been paid.

(6) "Comptroller" shall mean the comptroller of the state.

(7) "Duly licensed distributors" shall mean and include any distributor holding an unrevoked license issued by the comptroller of the state.

(8) "Motor fuel tax" shall mean and include any and all taxes imposed by the laws of the state upon or measured by the sale, use, distribution or consumption of motor fuel.

(9) "Motor fuel tax collection fund" shall mean any fund or funds heretofore or hereafter created by the legislature for the purpose of enforcing the motor fuel tax laws of the state.

HISTORY.—§1, ch. 16082, 1933; CGL 1936 Supp. 1167 (62) Sub. §(5) am. §1, ch. 28100, 1953.

207.02 Application for license.—It is unlawful for any distributor to engage in business as a distributor of motor fuel within this state unless such distributor is the holder of an uncanceled license issued by the comptroller to engage in such business. To procure such license every distributor shall file with the comptroller an application upon oath and in such form as the comptroller may prescribe, setting forth:

(1) The name under which the distributor will transact business within the state;

(2) The location, with street number address, of its principal office or place of business within this state;

(3) The name and complete residence address of the owner or the names and addresses of the partners, if such distributor is a partnership, or the names and addresses of the principal officers, if such distributor is a corporation or association; and if such distributor is a corporation organized under the laws of another state, territory or country, it shall also file with such application a certified copy of the certificate or license issued by the secretary of state showing that such corporation is authorized to transact business in the state.

Upon filing of an application for a license, and concur-

rently therewith, a bond of the character stipulated and in the amount provided for, shall be filed with the comptroller. No license shall issue upon any application unless accompanied by such a bond.

Upon the filing of the application for a license, a filing fee of five dollars shall be paid to the comptroller.

HISTORY.—§2, ch. 16082, 1933; CGL 1936 Supp. 1167(63).

207.03 Application by person whose license has been canceled; procedure.—In the event that any application for a license certificate to transact business as a distributor in the state shall be filed by any person whose license shall at any time theretofore have been canceled for cause by the comptroller or in case said comptroller shall be of the opinion that such application is not filed in good faith, or that such application is filed by some person as a subterfuge for the real person in interest whose license or registration shall theretofore have been canceled for cause by said comptroller, then and in any of said events the comptroller, after a hearing of which the applicant shall have been given five days' notice in writing and in which said applicant shall have the right to appear in person or by counsel and present testimony, may refuse to issue to such person a license certificate to transact business as a distributor in the state.

HISTORY.—§2, ch. 16082, 1933; CGL 1936 Supp. 1167(63).

207.04 Licensing of distributors. — The application in proper form having been accepted for filing, the filing fee paid, and the bond having been accepted and approved, the comptroller shall issue to such distributor a license certificate to transact business as a distributor in the state, subject to cancellation of such license as provided by law.

The license certificate so issued by the comptroller shall not be assignable, and shall be valid only for the distributor in whose name issued, and shall be displayed conspicuously in the principal place of business of said distributor in the state.

The comptroller shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all duly licensed distributors.

HISTORY.—§2, ch. 16082, 1933; CGL 1936 Supp. 1167(63); am. §7, ch. 22858, 1945.

207.05 License number and cards; penalties.—Each distributor shall be assigned a license number upon qualifying for a license hereunder, and the comptroller shall issue to each such licensee separate license cards for each tank truck operated by such distributor. Such license card shall indicate the number so assigned the distributor, the motor number of the

truck authorized to be operated under such license card, and such other information as the comptroller may prescribe. Such license card shall be conspicuously displayed on the tank truck to which it is assigned and any distributor operating a tank truck in this state, conveying or transporting motor fuel without such license card shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than ten dollars nor more than one hundred dollars or to confinement in jail for not less than ten nor more than thirty days.

HISTORY.—§2, ch. 16082, 1933; CGL 1936 Supp. 1167(63), 7794(5).
cf.—§775.06 Alternative punishment.

207.06 Bond required of licensed distributors.—Each distributor shall file with the comptroller a bond in a penal sum of not less than three thousand (\$3,000.00) dollars nor more than thirty-five thousand (\$35,000.00) dollars, the said sum to be approximately three times the average monthly motor fuel tax paid or due by such distributor during the next preceding twelve calendar months under the laws of this state; provided, however, that any person subsequently becoming a distributor, as heretofore defined, shall file a bond in the minimum penalty of three thousand (\$3,000.00) dollars. Such bond shall be in such form as may be approved by the comptroller, shall be executed by some surety company duly licensed to do business under the laws of the State of Florida, as surety thereon, and upon which such distributor shall be the principal obligor and the State of Florida shall be the obligee, conditioned upon the prompt filing of true reports and the payment by such distributor to the comptroller of the State of Florida of any and all motor fuel taxes which are now or which hereafter may be levied or imposed by the State of Florida, together with any and all penalties and interest thereon, and generally upon faithful compliance with the provisions of the motor fuel tax laws of the State of Florida.

In the event that liability upon the bond thus filed by the distributor with the comptroller shall be discharged or reduced, whether by judgment rendered, payment made or otherwise, or if in the opinion of the comptroller any surety on the bond theretofore given shall have become unsatisfactory or unacceptable, then the comptroller may require the distributor to file a new bond with satisfactory sureties in the same amount, failing which the comptroller shall forthwith cancel the license certificate of said distributor. If such new bond shall be furnished by said distributor as above provided, the comptroller shall cancel and surrender the bond of said distributor for which such new bond shall be substituted.

In the event that upon hearing, of which the distributor

shall be given five days' notice in writing, the comptroller shall decide that the amount of the existing bond is insufficient to insure payment to the state of the amount of the tax and any penalties and interest for which said distributor is or may at any time become liable, then the distributor shall forthwith upon the written demand of the comptroller file additional bond in the same manner and form with like security thereon as hereinbefore provided; provided further, that the total amount of any such additional bond as well as the bond required under the provisions of the first paragraph of this section shall not exceed the maximum of twenty thousand dollars, and the comptroller shall forthwith cancel the license certificate of any distributor failing to file an additional bond as herein provided.

Any surety on any bond furnished by a distributor as above provided shall be released and discharged from any and all liability to the State of Florida accruing on such bond after the expiration of sixty days from the date upon which such surety shall have lodged with the comptroller written request to be released and discharged; provided, however, that such request shall not operate to relieve, release or discharge such surety from any liability already accrued, or which shall accrue, before the expiration of said sixty-day period. The comptroller shall, promptly on receipt of notice of such request, notify the distributor who furnished such bond, and unless such distributor shall on or before the expiration of such sixty-day period file with the comptroller a new bond with a surety company satisfactory to the comptroller in the amount and form hereinbefore in this section provided, the comptroller shall forthwith cancel the license of said distributor. If such new bond shall be furnished by said distributor as above provided, the comptroller shall cancel and surrender the bond of said distributor for which such new bond shall be substituted.

HISTORY.—§3, ch. 16082, 1933; CGL 1936 Supp. 1167 (64).

207.07 Comptroller may cancel licenses; surrender of bond.—If a distributor shall at any time knowingly file a false monthly report of the data or information required by the motor fuel tax laws, or shall fail, refuse or neglect to file the monthly report required by such laws, or to pay the motor fuel tax as required by this chapter and the laws of the state, the comptroller may forthwith cancel the license of said distributor and notify such distributor in writing of such cancellation by registered mail to the last known address of such distributor appearing on the files of the comptroller.

The comptroller may cancel any license hitherto or hereafter issued to any distributor, such cancellation to become effective sixty days from the date of receipt of the written

request of such distributor for cancellation thereof, or said comptroller may cancel the license of any distributor upon investigation and sixty days' notice mailed to the last known address of such distributor, if he shall ascertain and find that the person to whom such license has been issued is no longer engaged in business as a distributor, and has not been so engaged for the period of six months immediately preceding such cancellation; but no license shall be canceled upon the request of any distributor until and unless the distributor shall, prior to the date of such cancellation, have paid to the state all motor fuel taxes payable under the laws of the state, together with any and all penalties and fines accruing by reason of any failure on the part of said distributor to make accurate reports as required by the motor fuel tax laws of Florida or to pay said taxes and penalties. In the event that the license of any distributor shall be canceled by the comptroller as hereinbefore in this section provided, and in the further event that said distributor shall have paid to the state all motor fuel taxes due and payable by it under the laws of the state together with any and all penalties accruing by reason of any failure on the part of said distributor to make accurate reports or to pay said tax and penalties, then the comptroller shall cancel and surrender the bond theretofore filed by said distributor.

HISTORY.—§4, ch. 16082, 1933; CGL 1936 Supp. 1167(65).

207.08 Estimate of amount of motor fuel taxes due and unpaid.—Whenever any distributor shall neglect or refuse to make and file any report for any calendar month, as required by the motor fuel tax laws of this state, or shall file an incorrect or fraudulent report, or shall be in default in the payment of any motor fuel taxes and penalties thereon payable under the laws of this state, the comptroller, after giving at least five days' notice to such distributor, shall, from any information he may be able to obtain from his office or elsewhere, estimate the number of gallons of motor fuel, with respect to which the distributor has become liable for taxes under the motor fuel laws of this state, and the amount of taxes due and payable thereon, to which sum shall be added a sum equal to ten per cent thereof, as a penalty for the failure of such distributor or his default aforesaid.

In any action or proceeding for the collection of the motor fuel tax and any penalties or interest imposed in connection therewith, an assessment by the comptroller of the amount of the tax due and interest or penalties due to the state shall constitute prima facie evidence of the claim of the state, and the burden of proof shall be upon the distributor to show that the assessment was incorrect or contrary to law.

HISTORY.—§§5, 24, ch. 16082, 1933; CGL 1936 Supp. 1167(66), 1167(84).

207.09 Suits for collection of unpaid taxes.—Upon demand of the comptroller the attorney general, or any state attorney of any judicial circuit, shall bring appropriate actions, in the name of the state or in the name of the comptroller in the capacity of his office, for the recovery of the above mentioned taxes, penalties and interest, and judgment shall be rendered for the amount so found to be due together with costs; provided, however, that if it shall be found as a fact that such failure to pay was willful on the part of any distributor, judgment shall be rendered for double the amount of the tax found to be due, with costs. The comptroller may employ an attorney at law to institute and prosecute proper proceedings to enforce payment of the motor fuel taxes provided for by the laws of this state and penalties and interest provided for by this chapter and fix the compensation for the services of said attorney at law.

HISTORY.—§5, ch. 16082, 1933; CGL 1936 Supp. 1167 (66).

207.10 Comptroller's warrant for collection of unpaid taxes.—Upon the determination of the amount of unpaid taxes and penalties due, the comptroller may issue a warrant, under the official seal of his office, directed to the sheriff of any county of the state, commanding said sheriff to levy upon and sell the goods and chattels of such distributor found within his jurisdiction, for the payment of the amount of such delinquency, with the added penalties and interest and the cost of executing the warrant and conducting the sale, and to return such warrant to the comptroller and to pay the comptroller the money collected by virtue thereof; provided, however, that any surplus resulting from said sale after all payments of costs, penalties and delinquent taxes have been made shall be returned to the defaulting distributor. The sheriff, to whom any such warrant shall be directed, shall proceed upon the same in all respects to and with like effect and in the same manner (with the exceptions herein noted) as prescribed by law in respect to executions issued against goods and chattels upon judgments by the several circuit courts. In the event there shall be a contest or claim of any kind with reference to the property levied upon, or the amount of taxes, costs or penalties due, such contest or claim shall be tried in the circuit court in and for the county in which the warrant was executed as nearly as may be in the same manner and means as such contest or claim would have been tried in such court had the warrant originally issued upon a judgment rendered by said court; provided, that the warrant issued as aforesaid shall constitute prima facie evidence of the amount of taxes, interest and penalties due to the state by said distributor, and the burden of proof shall be upon the distributor to show that said amounts or penalties

were incorrect; provided further, that nothing in this section shall be construed as forfeiting or waiving any rights to collect such taxes or penalties by an action upon any bond that may be filed with the comptroller under the provisions of this chapter, or by suit or otherwise, and in case such suit, action or other proceeding shall have been instituted for the collection of said tax, such suit, action or other proceeding shall not be construed as waiving any other right herein provided; provided further, that any civil proceeding under this chapter shall not be construed as a waiver or estoppel in any criminal proceeding against such distributor under this chapter.

HISTORY.—§24, ch. 16082, 1933; CGL 1936 Supp. 1167(84); am. §7, ch. 22858, 1945.

207.11 Report from persons not distributors.—Every person purchasing or otherwise acquiring motor fuel in tank car, truck or cargo lots and selling, using, consuming or otherwise disposing of the same for delivery in Florida not required by the provisions of this chapter to be licensed as a distributor in motor fuel or by the laws of Florida to make reports, shall file a statement setting forth the name under which such person is transacting business within the state, the location with street number address of such person's principal office or place of business within the state, the name and address of the owner, or the names and addresses of the partners if such person is a partnership, or the names and addresses of the principal officers if such person is a corporation or association, and, on or before the fifteenth day of each calendar month, such person shall, on forms prescribed by the comptroller report to the comptroller all purchases or other acquisition and sales or other disposition of motor fuel during the next preceding calendar month, giving a record of each tank car, truck or cargo lot delivered to a point within Florida. Such report shall set forth from whom each tank car, truck or cargo lot was purchased or otherwise acquired, point of shipment, to whom sold or shipped, point of delivery, date of shipment, the name of the carrier, the initials and number of the car, and the number of gallons contained in such tank car, if shipped by rail, and the name and owner of the boat, barge or vessel, and the number of gallons contained therein, if shipped by water, and the name of the owner of the truck and the number of gallons contained in such truck if shipped by truck, and shall contain any other additional information the comptroller may require relative to such motor fuel.

HISTORY.—§6, ch. 16082, 1933; CGL 1936 Supp. 1167(67).

207.12 Penalty for failure to submit report.—When any person, not required by the provisions of this chapter to register as a distributor of motor fuel, purchasing or otherwise

acquiring motor fuel in tank car, truck or cargo lots and selling, using, consuming or otherwise disposing of the same for delivery in Florida, shall fail to submit his monthly report to the comptroller by the sixteenth day of the month succeeding the month in which said lot or lots of motor fuel were received, acquired or purchased, or when such person shall fail to submit in such monthly report the data required by this chapter, such person shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than one hundred dollars or to imprisonment of not more than thirty days, for the first offense; and shall be fined an amount not less than one hundred dollars nor more than one thousand dollars or be subjected to imprisonment for not less than thirty days, nor more than a year, for each subsequent offense.

HISTORY.—§6, ch. 16082, 1933; CGL 1936 Supp. 7794(6).
cf.—§775.06 Alternative punishment.

207.13 Reports from carriers transporting motor fuel, kerosene or similar products.—Every railroad company, street car, suburban or interurban railroad company, pipe line company, water transportation company, and common carrier transporting motor fuel, kerosene, casinghead gasoline, natural gasoline, naphtha, or distillate, either in interstate or intrastate commerce, to points within Florida, and every person transporting motor fuel, kerosene, casinghead gasoline, natural gasoline, naphtha or distillate, by whatever manner to a point in Florida from any point outside of said state, shall report under oath to the comptroller on forms prescribed by said comptroller all deliveries of motor fuel, kerosene, casinghead gasoline, natural gasoline, naphtha or distillate so made to points within the state.

Such reports shall cover monthly periods, shall be submitted within fifteen days after the close of the month covered by the report, shall show the name and address of the person to whom the deliveries of motor fuel, kerosene, casinghead gasoline, natural gasoline, naphtha or distillate have actually and in fact been made, the name and address of the originally named consignee, if motor fuel, kerosene, casinghead gasoline, natural gasoline, naphtha or distillate has been delivered to any other than the originally named consignee, the point of origin, the point of delivery, the date of delivery, and the number and initials of each tank car and the number of gallons contained therein, if shipped by rail; the name of the boat, barge or vessel, and the number of gallons contained therein if shipped by water; the license number of each tank truck and the number of gallons contained therein, if transported by motor truck; if delivered by other means, the manner in which such delivery is made; and such other additional

information relative to shipments of motor fuel and kerosene as the comptroller may require.

HISTORY.—§7, ch. 16082, 1933; CGL 1936 Supp. 1167(68).

207.14 Reports to be filed whether taxes due or not.—All statements or reports required by this chapter and the motor fuel tax laws of this state to be made to the comptroller monthly, shall be filed each month regardless of whether or not a motor fuel tax is due under the provisions of the laws of Florida.

HISTORY.—§17, ch. 16082, 1933; CGL 1936 Supp. 1167(78).

207.15 Penalty for false statements in reports.—Any false or fraudulent statement or report submitted under the motor fuel tax laws of this state and sworn to by a person knowing same to be false or fraudulent, shall constitute perjury and upon conviction thereof, the person so convicted shall be punished as provided by law for conviction of perjury under §837.01.

HISTORY.—§17, ch. 16082, 1933; CGL 1936 Supp. 7794(12).

207.16 Retention of records by distributors and other persons.—Each distributor shall maintain and keep, for a period of two years, such record or records of motor fuel received, used, consumed, sold and delivered within this state by such distributor, together with invoices, bills-of-lading, and other pertinent records and papers as may be required by the comptroller for the reasonable administration of the motor fuel tax laws of this state.

Every person purchasing motor fuel taxable under the laws of the state from a distributor for the purpose of resale, shall maintain and keep for a period of one year a record of motor fuel received, the amount of tax paid to the distributor as part of the purchase price, together with delivery tickets, invoices, and bills of lading, and such other records as the comptroller shall require.

Penalty: Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and shall, upon conviction thereof, be sentenced to pay a fine of not more than one thousand dollars and costs of prosecution, or to undergo imprisonment for not more than one year.

HISTORY.—§8, ch. 16082, 1933; CGL 1936 Supp. 1167(69), 7794(7).
cf.—§775.06 Alternative punishment.

207.17 Inspection of records; hearings; forms. — The comptroller or any deputy, employee or agent authorized by him, may examine, during the usual business hours of the day, the records, books, papers, storage tanks, and any other equipment of any distributor, purchaser, or common or con-

tract carrier, pertaining to motor fuel or kerosene received, sold, shipped, delivered or used, as the case may be, to verify the truth and accuracy of any statement, report or return, or to ascertain whether or not the motor fuel taxes imposed by law have been paid. The comptroller may, in the enforcement of the provisions of this chapter and of the motor fuel tax laws of this state, hold hearings, take the testimony of any person, and for such purpose may issue subpoenas and compel the attendance of witnesses, and may conduct such investigations as he may deem necessary.

HISTORY.—§9, ch. 16082, 1933; CGL 1936 Supp. 1167(70).

207.18 Motor fuel taxes a lien on property.—If any person liable for the motor fuel tax imposed by the laws of this state neglects or refuses to pay the same, the amount of such tax (including any interest, penalty or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the state upon all franchises, property and rights to property, whether real or personal, then belonging to or thereafter acquired by such person (whether such property is employed by such person in the prosecution of business or is in the hands of an assignee, trustee or receiver for the benefit of creditors) from the date said taxes are due and payable. Such lien shall have priority over any lien or incumbrance whatsoever except the lien of other state taxes having priority by law, and except that such lien shall not be valid as against any bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights shall have attached prior to the time when the comptroller shall have filed notice of such lien in the office of the clerk of the circuit court of the county in which the principal place of business of such person is located (for which filing no fee shall be required). Such lien shall continue until the amount of said tax, together with any penalties and interest subsequently accruing thereon, is paid. The comptroller may issue a certificate of release of lien when the amount of such tax, together with any penalties and interest subsequently accruing thereon, has been satisfied by such person, and such person may record the same with the clerk of the circuit court in and for the county in which the notice of lien was filed.

HISTORY.—§10, ch. 16082, 1933; CGL 1936 Supp. 1167(71).

207.19 Officer, etc., selling property belonging to a distributor.—No sheriff, receiver, assignee, master or other officer shall sell the property or franchise of any person who is distributor without first filing with the comptroller a statement containing the following information:

(1) Name of the plaintiff or party at whose instance or upon whose account the sale is made;

(2) Name of the person whose property or franchise is to be sold:

(3) The time and place of sale:

(4) The nature of the property and the location of the same.

The comptroller after receiving notice as aforesaid shall furnish to the sheriff, receiver, trustee, assignee, master or other officer having charge of the sale, a certified copy or copies of all motor fuel taxes, penalties, and interest on file in the office of the comptroller as liens against such person, and in the event there are no such liens, a certificate showing that fact, which certified copies or copy of certificate shall be publicly read by such officer at and immediately before the sale of the property or franchise of such person.

HISTORY.—§10, ch. 16082, 1933; CGL 1936 Supp. 1167(71).

207.20 Comptroller to furnish certificates of liens.—The comptroller shall furnish to any person applying therefor a certificate showing the amount of all liens for motor fuel tax, penalties, and interest that may be of record in the files of the comptroller against any person under the provisions of this chapter.

HISTORY.—§10, ch. 16082, 1933; CGL 1936 Supp. 1167(71).

207.21 Foreclosure of liens.—The comptroller may cause to be filed in the name of the state a bill in chancery to foreclose the liens provided for herein, and the practice, pleading and procedure of foreclosure shall be as nearly as may be in accordance with the practice, pleading and procedure for foreclosure of mortgages on real estate. A certificate of the comptroller setting forth the amount of motor fuel taxes due shall be prima facie evidence of the matter therein contained. Said suit may be instituted at any time after said lien becomes effective. The purchaser at any sale in suits for the foreclosure of said liens shall be entitled to a deed and the same process and remedies to obtain possession of the premises as in suits for the foreclosure of mortgages. The title to the land conveyed by such deed shall be indefeasible as to all parties defendant in the action.

HISTORY.—§10, ch. 16082, 1933; CGL 1936 Supp. 1167(71).

207.22 Discontinuance or transfer of business; penalty.—Whenever a distributor ceases to engage in business as a distributor within the state by reason of the discontinuance, sale or transfer of the business of such distributor, such distributor shall notify the comptroller in writing at least ten days prior to the time the discontinuance, sale or transfer takes effect. Such notice shall give the date of discontinuance and, in the event of a sale or transfer of the business, the date

thereof and the name and address of the purchaser or transferee thereof. All motor fuel taxes, penalties and interest not due and payable under the provisions of the laws of this state, shall, notwithstanding such provisions, become due and payable concurrently with such discontinuance, sale or transfer; and any such distributor concurrently with such discontinuance, sale or transfer, shall make a report, pay all such taxes, interest, and penalties, and surrender to the comptroller the license certificate theretofore issued to said distributor by the comptroller.

Unless the notice above provided for shall have been given to the comptroller as above provided, such purchaser or transferee shall be liable to the state for the amount of all taxes, penalties, and interest under the laws of Florida accrued against any such distributor selling or transferring his business, on the date of such sale or transfer, but only to the extent of the value of the property and business thereby acquired from such distributor.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall upon conviction thereof be sentenced to pay a fine of not less than fifty dollars nor more than three hundred dollars and costs of the prosecution, or to undergo imprisonment for not more than one year. Nothing in this section shall be construed as releasing the distributor so transferring or discontinuing his business of liability for any motor fuel tax, or for any interest or penalty due under the motor fuel tax laws.

HISTORY.—§11, ch. 16082, 1933; CGL 1936 Supp. 1167(72), 7794(8).
cf.—§775.06 Alternative punishment.

207.23 Not to settle for less than amounts actually due.—
The comptroller shall have no right, power, or authority to settle or compromise with any distributor any claim of the state accruing under the motor fuel tax laws of this state for a sum less than the full amount due, in conformity with this chapter.

HISTORY.—§12, ch. 16082, 1933; CGL 1936 Supp. 1167(73).

207.24 Transportation of motor fuel over public highways.
—Every person hauling, transporting or conveying motor fuel over any of the public highways of this state must, during the entire time he is so engaged, have in his possession an invoice or delivery ticket, bill of sale, or other record evidence showing the true name and address of the person from whom he has received the motor fuel, and the number of gallons so originally received by him from said person, and the true name and address of every person to whom he has made deliveries of said motor fuel, or any part thereof, and the num-

ber of gallons so delivered to each of said persons. The person hauling, transporting or conveying such motor fuel shall, at the request of any person required by law to inquire into or investigate said matters, produce and offer for inspection said invoice, or delivery ticket, or bill of sale, or record evidence. If said person fails to produce the invoice, or delivery ticket, or bill of sale or record evidence, or if, when produced, it fails to clearly disclose said information, the same shall be prima facie evidence of a violation of this section. No person shall haul, transport or convey motor fuel over any of the public highways of the state except in vehicles plainly and visibly marked on each side and on the rear thereof with the word "Gasoline" or other name of the motor fuel being transported, in letters at least four inches high and of corresponding appropriate width, together with the name and address of the owner of the vehicle in which such motor fuel is contained. Any person guilty of violating any of the provisions of this section shall, upon conviction, be fined not less than one hundred dollars nor more than two hundred fifty dollars, or imprisoned for a term of not less than fifteen nor more than sixty days. The provisions of this section shall not apply to vehicles transporting motor fuel not in excess of one hundred gallons contained in the fuel tank of such vehicle provided for the carrying of motor fuel for propelling same, which motor fuel is to be used solely for the motive power of such vehicle, nor to vehicles transporting motor fuel in quantities of not more than five gallons for emergency purposes, nor to motor fuel being transported by common carrier in railroad cars.

HISTORY.—§13, ch. 16082, 1933; CGL 1936 Supp. 1167(74), 7794(9).
cf.—§775.06 Alternative punishment.

207.25 Transportation of motor fuel by boats over the navigable waters of this state.—Every person hauling, transporting or conveying motor fuel over any of the navigable waters of this state must, during the entire time he is so engaged, have in his possession an invoice or bill of sale or other record evidence showing the true name and address of the person from whom he has received said motor fuel and the true name and address of every person or persons to whom he is making deliveries of same, and the number of gallons (that is, a person hauling, transporting or conveying said motor fuel must have in his possession record evidence of the name and address of the person from whom he has received the same, and also of the name and address of the person to whom he is going to deliver the same, and the number of gallons). The person hauling, transporting or conveying said motor fuel shall at the request of any person authorized by law to inquire into or investigate said matters, produce and offer for inspection said invoice or bill of sale or other record

evidence. If said person fails to produce the invoice or bill of sale or other record evidence, or if, when produced, it fails to clearly disclose said information, the same shall be prima facie evidence of a violation of this section. No person shall haul, transport or convey motor fuel in boats over any of the navigable waters of the state, except in boats plainly and visibly marked on both sides and above the water line thereof with the word "Gasoline" or other name of the motor fuel being transported, in letters at least four inches high and of corresponding appropriate width, together with the name and address of the owner of the boat in which such motor fuel is contained. Any person guilty of violating any of the provisions of this section, shall, upon conviction, be fined not less than one hundred dollars nor more than two hundred fifty dollars, or imprisoned for a term of not less than fifteen nor more than sixty days. The provisions of this section shall not apply to boats transporting motor fuel to be used solely for their own motive power.

HISTORY.—§14, ch. 16082, 1933; CGL 1936 Supp. 1167(75), 7794(10).
cf.—§775.06 Alternative punishment.

207.26 Repealed.—(by Chapter 57-1)

207.27 Forfeiture of vehicles and boats illegally transporting or delivering motor fuel.—The right of property in and to all conveyances, boats and other vehicles of transportation, and all tanks and other equipment used in connection therewith, employed in the illegal transportation or delivery of motor fuel in this state for the purpose of illegally evading or avoiding any motor fuel tax provided or imposed by the laws of this state, and all other personal property that may have been used by any person for the purpose of illegally evading or avoiding any such tax, or which may have been used to facilitate the illegal evasion or avoidance of any such tax, is hereby declared not to exist in any person, and the same shall be forfeited. The comptroller, the comptroller's deputies, the several sheriffs, deputy sheriffs, constables and police officers of municipalities, shall seize any and all such things, and the same shall be safely kept by the sheriff of the county until disposed of as in this section provided.

The sheriff of the county, within ten days after the receipt of any such things, shall make and subscribe to an affidavit in writing before some officer authorized by law to administer an oath, reciting such seizure, with the date, place and things seized, giving a reasonably full description thereof, and the name of the alleged owner and person from whose possession same were taken, if either or both be known to such sheriff, and a short statement of the circumstances under which said property was being used for the purpose of ille-

gally evading or avoiding or had been used for the purpose of illegally evading or avoiding any motor fuel tax provided or imposed by the laws of Florida; and:

(1) Within ten days after the receipt of such things by the sheriff, such sheriff shall present such affidavit to the judge of the circuit court of the county where such things were seized, and the circuit judge of said court shall direct that such sheriff shall serve written notice upon such owner and person from whose possession such things were taken, if known, and if he, it or they be within the county, of time and place of the hearing upon such affidavit, which may be in term time or in vacation, and at any place within the judicial circuit as the circuit judge may fix, which notice shall be signed by the circuit judge citing such person to appear and show cause, if any, why such things should not be adjudged forfeited and disposed of as in this section provided; but,

(2) If such sheriff shall recite in his affidavit that such things were not taken from the possession of any person, or that the owner is unknown, or that either of such persons is without the county, conceals himself or themselves, or that personal service of such notice can not be made by such sheriff for any good reason, the circuit judge shall by written order direct that, in lieu of personal notice of such hearing to any such person, that written notice of such hearing shall be posted at the county court house door, directed to all persons interested in such things, and giving notice of such seizure, and of the date and place thereof and a reasonable description of the things seized, and of the time and place of the hearing upon such affidavit, which notice shall be signed by the circuit judge;

(3) If at the time and place provided for the hearing upon such affidavit no person shall appear and claim such things, the affidavit of the sheriff shall stand as confessed and taken as true, and the recitals therein contained shall not thereafter be open to question in any other court or proceeding, and the circuit judge shall thereupon make an order in writing directing the sale thereof;

(4) Such sale shall be in the presence of the clerk of the circuit court of the county, and at such times, places and in such manner as such judge shall in his order direct.

HISTORY.—§16, ch. 16082, 1933; CGL 1936 Supp. 1167(77).

207.28 Trial of issues interposed by defense; sale, etc.—Should any person appear at the hearing provided for in §207.27, and claim the things seized and interpose any defense to the affidavit mentioned in said section, the circuit judge shall determine whether the evidence adduced proves beyond

a reasonable doubt that such things are forfeited and make his written order accordingly. And if he shall determine in the affirmative, such things shall be sold by the sheriff in the same manner and upon the same terms and conditions as provided in §207.27; but if he shall determine in the negative respecting all or any of such things, the part not forfeited shall be returned to the person legally entitled thereto. The hearing before the circuit judge shall be informal and he may make all needful rules and orders to carry this section into effect. And the sheriff may call to his assistance the state attorney, county solicitor or other commissioned prosecuting attorney or other prosecuting attorney regularly employed by the county, to assist him in preparing the affidavit herein mentioned, and represent him at the hearing before the circuit judge, and in taking and perfecting any appeal from the final decision of the circuit judge. If the state, the sheriff, or the claimant shall be dissatisfied with the decision of said circuit judge they may within ten days of the making of the order, appeal from the final decision of the court to the supreme court in the same manner as appeals in chancery are taken under general law and the rules of the supreme court, and upon such appeal being entered such circuit judge shall cause to be reduced to writing and authenticate with his signature all oral evidence considered by him upon such hearing and the same shall be filed with the papers in the case and thereby become a part of the record proper, and a bill of exceptions shall not be necessary. No appeal taken by any party shall operate as a supersedeas, but such things shall remain in the custody of the sheriff pending such appeal and to abide the final decision of the supreme court.

HISTORY.—§16, ch. 16082, 1933; CGL 1936 Supp. 1167 (77).

207.29 Costs and expenses of proceedings.—For the performance of the duties required of the sheriff by the provisions of §§207.27 and 207.28, he shall receive the same fees provided by law for the arrest and return of persons charged with crime, including the same mileage and the actual cost of transporting such things, and for each seizure made by him or his deputy, when the same are ordered sold by the circuit judge he shall receive an additional fee of five dollars, and all such fees and compensations shall be paid out of the proceeds of the sale. The clerks of the courts performing duties under the provisions aforesaid shall receive the same fees as prescribed by the general law for the performance of similar duties, and witnesses attending any investigation pursuant to subpoena shall receive the same mileage and per diem as if attending as a witness before the circuit court in term time. All fees and costs provided for shall be paid from the proceeds of the sale, or if there be no sale or if the proceeds

of such sale be insufficient to meet such fees and costs then such fees and costs shall be paid out of the motor fuel tax collection fund or other funds available for the enforcement of the motor fuel tax laws by the comptroller. In the event the proceeds of the sale are more than sufficient to pay all costs and fees attending said sale then the surplus thereof shall be sent to the comptroller to be disposed of as provided for the disposition of the taxes collected under the motor fuel tax laws of the state; provided, however, that any property seized under §207.27, against which there is existing a mortgage lien or retain title contract held by a person who has no knowledge that such property is being used for the purpose of illegally evading or avoiding the payment of the motor fuel taxes provided for under the laws of the state, then such seizure shall not invalidate such lien or retain title contract, but the same shall be paid out of any funds derived from a sale of said property, provided the retain title holder or mortgagee shall within thirty days after seizure come into court and set up his claim to such retained title lien or mortgage.

HISTORY.—§16, ch. 16082, 1933; CGL 1936 Supp. 1167(77).

207.30 Restraining and enjoining violations.—Any person who shall violate any of the provisions of this chapter, or who shall fail to pay all motor fuel taxes and all interest and penalties due by him to the state under the provisions of the laws of this state may be restrained and enjoined in a suit or other proceeding in any court of competent jurisdiction instituted in the name of the state by the attorney general or by any state attorney at the direction of the comptroller, from selling, consuming, using, distributing or transporting any motor fuel which is taxable under the laws of this state until such person shall have paid all of said taxes, interest and penalties due the state, and have complied with the provisions of this chapter. Any proceeding instituted under this section shall not operate as a bar to the prosecution of any person guilty of violating any of the criminal laws of the state.

HISTORY.—§19, ch. 16082, 1933; CGL 1936 Supp. 1167(80).

207.31 Posting price of motor fuel plus tax.—Distributors and all other persons selling motor fuel may add the amount of the motor fuel tax to the price of the motor fuel sold by them, and shall state the rate of the tax separately from the price of the motor fuel on all price display signs and invoices.

HISTORY.—§22, ch. 16082, 1933; CGL 1936 Supp. 1167(82).

207.32 Comptroller and deputies may make arrests, seize property and execute warrants.—The comptroller and his deputies, agents and employees may make arrests without warrants for any violation of any provision or provisions of this chapter or for any violation of the motor fuel tax laws

of this state. In all such cases the person arrested for any violation of any provision of this chapter or of the motor fuel tax laws of this state shall be surrendered without delay to the sheriff of the county in which the arrest was made and formal complaint made against him, in accordance with law.

The comptroller and his deputies, agents and employees also may seize property as set out in §§207.27-207.29 and upon said seizure being made shall surrender without delay such seized property to the sheriff of the county where said property was seized for further procedure as set out in said sections.

When the comptroller deems advisable, he may direct the warrant provided for in §207.10, to one of the said comptroller's deputies, agents and employees who shall then execute said warrant and proceed thereon in the same manner provided for sheriffs in such cases.

HISTORY.—§25, ch. 16082, 1933; CGL 1936 Supp. 1167(85).

207.33 Method for collection of tax cumulative.—The methods and means of effecting and enforcing the collection of motor fuel taxes as set out in this chapter shall be in addition to, and not in lieu of the methods and means of effecting and enforcing collection set out in the motor fuel tax laws of Florida.

HISTORY.—§28, ch. 16082, 1933; CGL 1936 Supp. 1167(87).

207.34 Appeals to courts from comptroller's decisions.—Any person aggrieved by an order or decision of the comptroller may within twenty days from the rendition of such order or decision, take an appeal therefrom to the circuit court in and for Leon county, upon notifying the comptroller to this effect, and upon giving bond with sureties to be approved by the clerk of said court, payable to the state, conditioned to pay all costs created by said appeal. The comptroller shall, within fifteen days after receipt by him of said notice of appeal, prepare and file with the clerk of said court a true and correct copy of the order or decision appealed from, together with a transcript of the proceedings had before it in connection with the said matter. The trial upon appeal to said circuit court shall be de novo and said court shall render judgment confirming, modifying or setting aside the order or decision of the comptroller, or in its discretion may remand the case to the comptroller for proceedings in conformity with the direction of the court. From the judgment of the circuit court either party may appeal to the supreme court, as in civil cases, within thirty days from the rendition of the judgment. No appeal hereunder shall suspend the

order or decision of the comptroller pending the determination of such appeal by said circuit court.

HISTORY.—§23, ch. 16082, 1933; CGL 1936 Supp. 1167(83).

207.35 General penalties for violations.—Any person who shall violate any of the provisions of this chapter, a penalty for which is not otherwise provided, shall upon conviction thereof for a first offense be punished by a fine of not more than one hundred dollars, or by imprisonment for a term of not more than thirty days, and for a second or further offense, shall be punished by a fine of not less than one hundred dollars nor more than five thousand dollars or by imprisonment for a term of not less than thirty days and not more than twelve months. Each day or part thereof, during which any person shall engage in business as a distributor without being the holder of an uncanceled license as provided by this chapter, shall constitute a separate offense within the meaning of this section; provided that in addition to the penalty imposed by this chapter the defendant shall be required to pay all motor fuel taxes and penalties due to the state.

HISTORY.—§20, ch. 16082, 1933; CGL 1936 Supp. 7794(13).
cf.—§775.06 Alternative punishment.

207.36 Records and files as public records.—The records and files in the office of the comptroller appertaining to this chapter shall be available to the public at any time during business hours. The comptroller shall prepare a list each month, of all distributors, and others, together with the amount of motor fuel tax or taxes paid thereby, and mail a copy thereof to each duly licensed distributor.

HISTORY.—§21, ch. 16082, 1933; CGL 1936 Supp. 1167(81).

207.37 Exchange of information among the states.—The comptroller of the state shall, upon request duly received from the officials to whom are entrusted the enforcement of the motor fuel tax laws of any other state, forward to such officials any information which he may have in his possession relative to the manufacture, receipt, sale, use, transportation or shipment by any person of motor fuel, kerosene or other petroleum products.

HISTORY.—§21, ch. 16082, 1933; CGL 1936 Supp. 1167(81).

207.38 Comptroller to make rules and regulations.—The comptroller shall make reasonable rules and regulations, which shall have the force and effect of law, to effect a strict enforcement of the provisions of this law and of the motor fuel tax laws of the state.

HISTORY.—§18, ch. 16082, 1933; CGL 1936 Supp. 1167(79).

CHAPTER 208

TAXES ON GASOLINE AND LIKE PRODUCTS

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208.01 License tax upon dealers.—Every dealer in gasoline, or other like products of petroleum, in this state, under whatever name designated, shall pay a license tax of five dollars per annum, to the state.

HISTORY.—§1, ch. 15659, 1931; CGL 1936 Supp. 1167(16); §1, ch. 20303, 1941.

208.02 Receipt for payment of license tax.—The comptroller shall issue to the licensee dealer in gasoline a receipt or certificate evidencing the payment of said license fees. Said receipt or certificate shall be posted on display and be so kept at all times open to the public view at the place of business for which same is issued.

HISTORY.—§4, ch. 15659, 1931; CGL 1936 Supp. 1167(19).

208.03 Disposition of license tax funds.—All moneys derived from the license tax of five dollars imposed by this law for the state license shall be paid into the state treasury to the credit of the general revenue fund.

HISTORY.—§5, ch. 15659, 1931; CGL 1936 Supp. 1167(20).

Am. §14, ch. 26869, 1951.

208.04 Gasoline taxes imposed.—

(1) An excise or license tax of six cents (6¢) per gallon, herein termed "gas tax," is imposed upon every gallon of gasoline, or other like products of petroleum, sold in this state, upon which such tax has not been paid or the payment thereof not lawfully assumed by some person handling the same in this state. This levy of tax is upon the consumer but shall be paid upon the first sale or transfer within this state whether by a distributor or dealer, except as expressly provided in subsection (2) hereof, who shall act as agent for the state in the collection of said tax whether he be the ultimate seller or not;

(2) Provided, distributors who hold valid distributor's licenses, may purchase gasoline in bulk lots, without the tax imposed by this section being paid upon the first sale or transfer in this state as aforesaid, for sale in wholesale quantities to retail dealers in the state, and be liable for and shall pay the tax on all gasoline so purchased and sold, and shall act as agent for the state in the collection and payment thereof. As a condition precedent to a distributor purchasing and selling gasoline and like products under this subsection without the tax being paid upon the first sale or transaction in this state, he must have made average monthly sales for the twelve (12) months next preceding of not less than forty thousand (40,000) gallons; provided that sales made under provisions of Section 208.45, Florida Statutes, shall be included in arriving at such average monthly sales.

(3) Upon the payment or lawful assumption of the tax by the distributor or dealer, the amount of the tax paid or

assumed may be added to the sales price of the product sold, and the amount of the tax may be stated separately from the price of the product on all price display signs, sales or delivery slips, bills, or statements which advertise or indicate the price of the product. The delivery of the product sold shall be deemed to be made at the point of destination.

(4) The above gas tax is made up of two (2) separate taxes:

First gas tax. A tax of four cents (4¢) per gallon for the use of state road department, as provided by law;

Second gas tax. A tax of two cents (2¢) per gallon to be apportioned and used as provided in section 16, article IX, of the state constitution.

208.05 Aviation motor fuel exempt from tax.—Each and every dealer in aviation motor fuel in the state by whatever name designated, who sells aviation motor fuel testing 78 octane number (A. S. T. M. method D-357-33T) or higher, of such quality not adapted for use in ordinary motor vehicles, being designed for and sold and exclusively used for aircraft motors, are exempted from the payment of any and all excise taxes levied by the state upon such motor fuel.

HISTORY.—§1, ch. 16789, 1935; CGL 1936 Supp. 1167(102).

208.06 Dealer to report to comptroller monthly; deduction.—The tax levied and assessed as provided in §208.04 shall be paid to the comptroller monthly in the following manner:

On or before the twenty-fifth day of each month the dealer shall report, under oath, to the comptroller the number of gallons of such products sold by him during the preceding month, and shall at the same time, pay to the comptroller the amount of tax computed to be due. The dealer shall deduct, from the amount of tax shown by the report to be payable an amount equivalent to two percent of the tax on motor fuel not exceeding five hundred thousand taxable gallons, and less an amount equivalent to one percent of the tax on motor fuels in excess of five hundred thousand gallons but not exceeding one million taxable gallons, which is hereby allowed to the dealer on account of services and expenses in complying with the provisions of this law, provided this allowance shall not be deductible unless payment of tax is made on or before the twenty-fifth day of the month as herein required. Such report shall show in detail the amount of products so sold and delivered by such dealer in the state. The taxes herein levied and assessed shall be in addition to any and all other taxes authorized, imposed, assessed or levied on gasoline and other like products of petroleum under any laws of the state.

HISTORY.—§1, ch. 15659, 1931; CGL 1936 Supp. 1167(16); §1, ch. 20303, 1941; am. §1, ch. 24308, 1947.

Am. §1, ch. 26796, 1951.

208.07 Penalty for failure to report.—If any dealer shall fail to make the report and payment to the comptroller as provided in §208.6, on or before the twenty-fifth day of the month succeeding the month for which said tax is due as therein provided, the comptroller shall estimate the amount of such products sold by such dealer during such months from such information as he may be able to obtain and shall add ten percent to the amount of such taxes, as estimated, as the penalty for the failure of such dealer to make such report or payment and shall proceed to collect such tax, together with such penalty and costs, and obtain the same as delinquent railroad taxes are collected by law.

HISTORY.—§2 ch. 15659, 1931; CGL 1936 Supp. 1167(17); am. §2, ch. 24308, 1947; §11, ch. 25035, 1949.
cf.—Ch. 195, Taxes upon railroads.

208.08 Payment of tax into state treasury.—All moneys derived from the gas taxes imposed by this chapter shall be paid into the state treasury by the comptroller, as follows:

First gas tax.—Shall be paid into the “State road license fund”;

Second gas tax.—Shall be paid into the “State roads distribution fund.”

Which special funds are created for the reception of the same.

HISTORY.—§3, ch. 15659, 1931; CGL 1936 Supp. 1167(18).

208.09 State road license fund; construction, etc., of roads.—All such moneys in the “State road license fund” shall be used for the construction and maintenance of state roads, as otherwise provided by law, under the direction of the state road department, which department may from time to time make requisition on the comptroller for funds to pay for the construction and maintenance of state roads. Money from said funds shall be drawn by the comptroller by warrant upon the state treasury pursuant to vouchers, and shall be paid in like manner as other state warrants are paid out of the appropriate funds against which same are drawn, and all sums of money necessary to provide for the payment of said warrants by the comptroller drawn upon said funds are appropriated annually out of said funds for the purpose of making such payments from time to time.

HISTORY.—§6, ch. 15659, 1931; CGL 1936 Supp. 1167(21).

208.10 State road license fund; use as to county roads, etc.—It is expressly recognized and declared by the legislature that all roads being constructed or built or which have heretofore been constructed or built, or which will be hereafter constructed or built by the state road department under prior

authorization or designation by the legislature as state roads, or which were constructed or built by any county or special road and bridge district or other special taxing district thereof, were, are and will be constructed and built as state projects and undertakings, and that the cost of the construction and building thereof was, is and will be a legitimate proper state expense incurred for a general and state purpose and should be wholly borne by the state. It is expressly recognized that certain of the counties of the State of Florida and special road and bridge districts or other taxing districts of such counties have advanced or contributed and paid to the state road department varying sums of money to be used and expended by said state road department in the construction and building of state roads theretofore authorized or designated by the legislature as state projects, and it is expressly recognized that certain of the counties of the state and special road and bridge districts or other taxing districts of such counties have paid or expended or caused to have been paid or expended varying sums of money in the construction and building of certain roads that are now state roads and heretofore designated as state roads by the legislature and that all such moneys have been and are being expended, furnished, advanced, contributed or paid out on account of expenses of the state in construction and building of said state roads to and for the general benefit of the state and that such sums should be returned and repaid respectively to each county to the amount that such county or any special road and bridge district, or special taxing districts thereof, has advanced or expended in the construction of the same.

HISTORY.—§7, ch. 15659, 1931; CGL 1936 Supp. 1167(22).

208.11 Distribution of second gas tax to counties, etc.—

(1) The chairman and auditor of the state road department shall, within ninety days after this law takes effect, ascertain and certify to the comptroller of the state and to the board of administration and to each county within the state the amount of money advanced and paid by the several counties, and/or special road and bridge districts or other special taxing districts of any counties, to the state for the use of the state road department in the construction and building of state roads, specifying separately and particularly the amount advanced and paid by each county; and the chairman and auditor of the state road department shall, within ninety days after this law takes effect ascertain and certify to the comptroller and to the board of administration and to every county of the state, the amount of money furnished, advanced, contributed, paid out or expended by the several counties and/or special road and bridge districts or other special tax-

ing districts of such counties in the building and construction of roads that are now designated state roads, specifying separately and particularly the amount furnished and expended by each county. The amount so certified as to any county shall include all moneys advanced, contributed, paid and expended, as aforesaid, by such county and by every special road and bridge district or other special taxing district for road and bridge purposes on roads now designated as state roads, in such county.

(2) Said certificate shall be audited by the comptroller, and, being found correct, shall constitute the basis for the subsequent allocation and apportionment of the moneys to be derived from the second gas tax and from which the disbursement shall be made to, or for the benefit of, such respective counties as herein provided, out of said 'state roads distribution fund' account. The comptroller shall each month draw his order on the treasurer of the state for the full net amount of moneys then with the state treasury in said 'state roads distribution fund', specifying the counties to which said moneys shall be paid, and the amount to be paid to each county, respectively. Said orders of said comptroller shall be countersigned by the governor, and shall be payable to the state treasurer as ex officio treasurer of the counties, respectively, participating therein. The monthly schedule of installments to be so paid to or for such counties shall be computed, determined and paid out monthly in the following ratio, to wit:

(a) One-third part of the said second gas tax shall be apportioned to the credit of the several counties on the basis of area of said counties, that is to say, the apportionment shall be to the county in the proportion that the area of the county shall bear to the area of all the counties;

(b) One-third part of said second gas tax shall be apportioned to the credit of the several counties on the basis of population of the counties, that is to say, the apportionment shall be to the county in the proportion that the population of the county shall bear to the total population of the state, as determined by the last preceding general state or federal census taken; and

(c) One-third part of said second gas tax shall be apportioned to the credit of the several counties on the basis of contribution which has heretofore been made by the respective counties and/or special road and bridge districts or other special taxing districts of such counties to the construction of state roads prior to July 1, 1931, either through funds or the equivalent thereof of the county and/or special road and bridge district, or other special taxing districts, of such counties turned over to the state road department from time to

time or through roads constructed by the counties and/or special road and bridge districts or other special taxing districts of such counties at county or district expense, and which were prior to July 1, 1931, made a part of the existing state highway system.

Sections 208.12—208.13—208.14 Repealed (by Chapter 57—411)

208.15 Reports required of wholesale dealers. — Each wholesale dealer in gasoline, or other like products of petroleum, shall, when making his report to the comptroller of the amount of such products sold in this state upon which the tax provided is due and payable by him to the comptroller of the state for the use of the state, at the same time report to the comptroller each and every sale made by such dealer of any quantity of gasoline, or other like products, which shall not have been at the time of such sale divested of its interstate character, which report shall show the name and business location of the person to whom the same is sold in this state. Every dealer shall, at the time other reports are required to be made to the comptroller, report to the comptroller each and every purchase of such products not theretofore divested of their interstate character made by such dealer upon which the tax is shown by the invoice thereof to have been assumed for report and payment by the dealer selling to him.

HISTORY.—§12, ch. 15659, 1931; CGL 1936 Supp. 1167(27).

208.16 Invoice to show whether or not tax paid.—Each dealer when selling to any other dealer any of the products taxed under this chapter, shall render an invoice of such sale to the purchaser and upon such invoice the dealer so rendering such invoice shall plainly state thereon whether or not the tax required will be reported and paid by him, and the purchaser so buying and receiving such products may fully rely upon the statement so made in such invoice.

HISTORY.—§13, ch. 15659, 1931; CGL 1936 Supp. 1167(28).

208.17 “Dealer” and “road” defined.—The term “dealer” as used in this chapter, or in any proceedings under this chapter, shall be deemed and taken to mean any person engaged in the business of selling in this state such of the products covered by this chapter as have been divested of their interstate character, and the tax imposed upon the quantity of such product sold in this state shall be collected only once and then upon the first sale after the same has lost its interstate character. The term “road” as used in this chapter, or in any

proceeding under this chapter, shall be deemed and taken to include highways and bridges.

HISTORY.—§11, ch. 15659, 1931; CGL 1936 Supp. 1167(26).

208.18 Penalty for violation of chapter.—Any person violating any of the provisions of this chapter, for the first offense, shall be guilty of a misdemeanor and shall be punished accordingly, and for the second or further offense, shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for a term of not more than twelve months; provided, however, that the penalties provided in this section shall be in addition to those provided for in §208.07.

HISTORY.—§14, ch. 15659, 1931; CGL 1936 Supp. 7451(2).
cf.—§775.06 Alternative punishment.
§775.07 Punishment for misdemeanor.

208.181 Retail gasoline dealers, refund allowed.—Every person, firm or corporation licensed to sell gasoline at retail to the general public at posted retail prices, hereinafter referred to as “retail dealers” shall be entitled to a refund of two per cent on the first gas tax, as defined in §208.04, imposed by the state, on such gasoline purchased by such retail dealer; to cover losses due to evaporation and shrinkage of such gasoline, subject to the conditions set forth in the following sections.

HISTORY.—Comp. §1, ch. 29699, 1955.

208.182 Requirements for refund; issuance and revocation of refund permit.—

(1) No retail dealer shall be entitled to a refund unless:

(a) He is the holder of a current certificate of license as prescribed by §208.02;

(b) He is the holder of an unrevoked refund permit issued by the state comptroller.

(2) Any retail dealer may procure a refund permit for such licensed gasoline business operated by him by filing application under oath with the comptroller on forms prescribed by him; which application shall be accompanied by the number of his license issued by the state comptroller and two dollars application fee. The proceeds derived from the application fee shall be used by the comptroller to defray the expense of administering this law for the biennium.

(3) Refund permits shall be issued by the comptroller after determining, by investigation, that applicant is entitled thereto and shall be renewed on or before October 1 each year, upon application as provided in subsection (2).

(4) Refund permits issued under this section may be revoked or suspended by the comptroller for cause after hear-

ing, which hearing shall be held within ten days after written notice has been sent the holder by registered mail.

(5) No refund permit may be assigned or transferred. The comptroller shall not approve refund payment to any person other than the holder of an unrevoked permit except the executor or administrator of the estate of a deceased permit holder.

HISTORY.—Comp. §2, ch. 29699, 1955.

208.183 Application for refund.—Refund permit holders may file application for refunds provided by §§208.181-208.186 with the comptroller. Said application shall be filed quarterly, within six months of date of purchase of gasoline with respect to which refund is claimed, on forms prescribed by the comptroller; shall be sworn to; shall state total quantity of gasoline purchased, location where purchased, period for which refund is claimed, date of purchase, from whom purchased, and any other information reasonably required by the comptroller. Invoice for each purchase of gasoline made during the period for which refund is claimed shall be attached to said application.

HISTORY.—Comp. §3, ch. 29699, 1955.

208.184 Approval of application; payment of refund.—The comptroller shall promptly examine each such application for refund and approve or disapprove it. If he disapproves the application for refund, he shall promptly notify the applicant of his reason therefor and a time and place when the applicant may be heard in support of his application. If he approves the application he shall authorize the amount claimed to be refunded as other refunds are made, and the amount shall be refunded and deducted by him from current motor fuel tax receipts.

HISTORY.—Comp. §4, ch. 29699, 1955.

208.185 Refund over-payment; adjustment.—In the event of over-payment of any refund provided for in §208.184, the comptroller shall refuse to make further refund until such over-payment is adjusted in a manner satisfactory to him.

HISTORY.—Comp. §5, ch. 29699, 1955.

208.186 False statements; penalty.—Any retail dealer who falsely swears to a refund application, knowing such statement to be false, is guilty of perjury; and upon conviction, in addition to the penalty prescribed by law, shall have his permit for refund revoked.

HISTORY.—Comp. §6, ch. 29699, 1955.

208.19 Failure to account for tax collected; embezzlement.—If any dealer shall collect from another, upon an invoice

rendered, the tax in this chapter contemplated, and shall fail to report and pay the same to the comptroller, as provided, he shall be deemed to be guilty of embezzlement of funds, the property of the state, and upon conviction shall be punished as if convicted of larceny of a like sum.

HISTORY.—§15, ch. 15659, 1931; CGL 1936 Supp. 7254(1).
cf.—§§811.01, 811.02, 811.021. Punishment for larceny.

208.20 Gasoline tax imposed upon motor fuels in vehicle reservoirs.—A tax of seven cents per gallon is fixed and levied on all motor vehicle fuel carried in motor vehicle reservoirs upon which other gasoline taxes of this state have not been paid, and such tax shall be paid into the state treasury to the credit of the general revenue fund.

The terms “reserve motor vehicle reservoirs” and “reserve reservoirs” shall be deemed to be any reservoir or receptacle in, upon or attached to any motor vehicle other than the reservoir provided by the manufacturer as the container for fuel used in propelling said motor vehicle.

The term “motor vehicle fuel” shall be deemed to include any petroleum or petroleum products.

The term “other gasoline taxes” shall be deemed to refer to any gasoline taxes provided by law, as long as any such law shall be in effect, and to apply to any gasoline taxes provided for by any subsequent statute.

Gasoline inspection laws of the state are declared to be applicable to the enforcement of this section.

HISTORY.—§§1-3, ch. 16081, 1933; CGL 1936 Supp. 1167(55), 1167(56), 1167(57).

208.21 Duties of police officers; penalties, etc.—

(1) All sheriffs, deputy sheriffs, constables and police officers in their respective jurisdictions shall, with or without warrant, stop and detain any person operating a motor vehicle in this state when they have good cause to suspect that such person is carrying motor vehicle fuel in reserve reservoirs upon which the gasoline taxes in this state have not been paid, and to seize any such motor vehicle fuel and reserve reservoirs containing such fuel that may be found and arrest the parties so operating such motor vehicle or having such motor vehicle fuel and reserve reservoir containing such fuel in their possession. If such fuel in such quantities as to confirm the belief of the illegal carrying of the same be found, the said fuel and the reserve reservoirs containing such fuel shall be prima facie evidence of the carrying of such fuel contrary to law.

(2) It is unlawful for any person to operate a motor vehicle in this state carrying motor vehicle fuel in reserve

reservoirs upon which other gasoline taxes of this state have not been paid, and any person so operating a motor vehicle carrying motor vehicle fuel in reserve reservoirs upon which the other gasoline taxes of this state have not been paid or having such fuel in their possession shall be deemed guilty of a misdemeanor and shall be subject to punishment as provided by law for misdemeanors.

(3) Upon the conviction of the person arrested for the violation of the provisions of this section, the judge of the court trying the case, after such notice to the person convicted and any other person entitled to such notice, as the judge may deem reasonable, may issue to the officer so making the arrest and seizure a written order adjudging and declaring such motor vehicle fuel and reserve reservoirs containing such fuel, or either, forfeited, and directing such officer to destroy such motor vehicle fuel or reserve reservoir containing such fuel. Such destruction shall be in the presence of such judge, or the clerk of his court, and at such time, place and in such manner as such judge shall in his order direct.

HISTORY.—§§4-6, ch. 16081, 1933; CGL 1936 Supp. 1167(58)-1167(60), 7794(4).
cf.—§775.07 Punishment for misdemeanor.

208.22 Stored motor fuels; license tax upon persons storing.—Every person, municipality, county or political subdivision, in this state, which shall import or receive by any means into this state, and keep in storage for a period of twenty-four hours or more after the same loses its interstate character as a shipment in interstate commerce, any gasoline or other like products of petroleum, which is intended to be stored or used for consumption in this state, shall, annually on the first day of October of each year, pay to the state a license fee of five dollars. Said license tax shall be paid into the state treasury in a special fund to the credit of the comptroller, who shall issue to the licensee a receipt evidencing the payment of said tax, which receipt shall be posted or displayed and so kept at all times open to the public view at the place of storage for which the same was issued.

It is unlawful for any person to keep in storage, for a period of twenty-four hours or more, after the same shall have lost its interstate character as a shipment in interstate commerce, any gasoline or like products of petroleum subject to taxation under this chapter, without having first obtained the license herein provided for and without otherwise complying, with the payment of taxes required to be paid.

HISTORY.—§§1, 2, 4, ch. 13756, 1929; CGL 1936 Supp. 1167(5), 1167(6), 1167(8).

208.23 Stored motor fuels tax.—An excise or license tax of six cents per gallon is levied upon every gallon of gasoline, or other like products of petroleum, which shall be shipped

or imported into this state and which shall thereafter for a period of twenty-four hours or more after it loses its interstate character as a shipment of interstate commerce, be kept in storage in this state to be used and consumed in this state, which has not already been subjected to the payment of an excise or license tax under some law of this state taxing gasoline or like products of petroleum. The tax herein provided shall not be fixed and taxed upon fuel oil, kerosene oil, distillate crude petroleum, residuum or smudge oil.

HISTORY.—§§1, 9, 10, ch. 13756, 1929; §1, ch. 15659, 1931; CGL 1936 Supp. 1167 (5), 1167 (13), 1167 (14), 1167 (16).

208.24 Stored motor fuels; disposition of taxes.—All taxes collected under §§208.22 and 208.23 shall be paid into the state treasury into a special fund to be credited to the account of the comptroller, which payments shall be made monthly. All persons subject to said taxes shall report, under oath, to the comptroller the number of gallons of gasoline, or other like products of petroleum held in storage by them for a period of more than twenty-four hours after the same has lost its interstate character, together with the amount of such products, which are kept in storage to be used or consumed in this state. Said persons, shall, at the time of filing the report aforesaid, pay into the state treasury, to the account of the comptroller, the amount of taxes computed upon the number of gallons upon which said person is liable for above taxes. Said persons shall deduct, from the amount of tax shown by the report to be payable, an amount equivalent to two percent of the tax on motor fuel not exceeding five hundred thousand taxable gallons, and less an amount equivalent to one percent of the tax on motor fuels in excess of five hundred thousand gallons but not exceeding one million taxable gallons, which is hereby allowed to the dealer on account of services and expenses in complying with the provisions of this law, provided this allowance shall not be deductible unless payment of tax is made on or before the twenty-fifth day of the month as herein required. The said report shall show in detail such facts as may be required by the comptroller and shall be upon such forms as may be furnished by the comptroller. The comptroller may require such additional and supplementary reports as he may deem necessary in order to ascertain the facts in any particular case, and in order to determine whether or not liability for taxes has been fully and truthfully reported and the tax fully paid.

HISTORY.—§2, ch. 13756, 1929; CGL 1936 Supp. 1167 (6).
Am. §2, ch. 26796, 1951.

208.25 Stored motor fuels; failure to report; penalties.—Should any person fail to make report to the comptroller, or to make payment into the state treasury to the account of

the comptroller, as provided in §208.24, on or before the twenty-fifth day of the month succeeding the month when due, the comptroller shall estimate the amount of products, liable for taxes from such information as he may be able to obtain, and the taxes due for each month, to which amount shall be added ten per cent thereof as a penalty for the failure of such person to make such report and payment, which amounts the comptroller shall proceed to collect, together with all costs, in the same manner as delinquent railroad taxes are collected.

Any person who shall fraudulently evade the payment of any such tax to which he may be liable, or who knowingly assists any other person with which he may be connected in evading payment of such taxes, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars or imprisonment in the county jail not to exceed twelve months.

HISTORY.—§3, ch. 13756, 1929; CGL 1936 Supp. 1167(7), 7451(1); am. §3, ch. 24308, 1947.
cf.—Ch. 195, Taxes upon railroads.
§775.06 Alternative punishment.

208.26 Stored motor fuels; application of chapter.—All provisions of this chapter, insofar as they relate to the duties and powers of the comptroller and the penalties and liabilities of persons violating the laws relating to stored motor fuels, shall apply to §208.22-208.25; however, the same shall not be construed as making any such gasoline, and other products of petroleum, liable to double taxation.

HISTORY.—§§5, 6, ch. 13756, 1929; CGL 1936 Supp. 1167(9), 1167(10).

208.27 Stored motor fuels; distribution of taxes.—The entire proceeds of all taxes collected under §§208.22 through 208.26, hereof, is annually appropriated for the following purposes, to-wit:

(1) For the payment of all costs and expenses of collection, including expenses of litigations for such collection and necessary clerical assistants and other expenses incurred in the administration of this chapter.

(2) All the remaining moneys derived from this chapter, after deducting the items mentioned in the preceding subdivision of this section, shall be distributed in like proportions and in the same manner and to the same objects as taxes collected from dealers in gasoline under other laws of the state are distributed.

HISTORY.—§8, ch. 13756, 1929; CGL 1936 Supp. 1167(12).

208.28 Comptroller to make rules; powers of comptroller.—The comptroller of the state shall make reasonable rules and regulations, which shall have the force and effect of law,

to govern reports and accounts by all persons dealing in or handling gasoline or other like products of petroleum, including state, county and municipal authorities, for the purpose of enabling the comptroller to ascertain whether or not any gasoline or other like products of petroleum are being dealt with, handled or stored in this state under such circumstances as to become liable to the tax imposed by any law relating to a tax on gasoline or other like products of petroleum.

The comptroller is further given power to investigate, or cause to be investigated under his authority, all cases involving dealers in gasoline by persons receiving, handling or storing the same and to determine, from such investigation, whether or not any law relating to the gasoline tax, is being evaded or illegally avoided, and the determination of the comptroller in any case shall be *prima facie*, valid and authentic in all courts in this state, and all actions involving the validating of taxes on dealers in gasoline or persons subject to the provisions of this chapter.

HISTORY.—§7, ch. 13756, 1929; CGL 1936 Supp. 1167(11).

Sections 208.29, 208.30, 208.31, 208.32, 208.33, 208.34, 208.35, 208.36, 208.37, 208.38, 208.39, 208.40, 208.41, 208.42 Repealed.—(by Chapter 57 - 411)

208.43 Legislative intention concerning senate joint resolution 324.—It is hereby declared to be the meaning and intention of the legislature that those provisions of senate resolution No. 324 of the 1941 session of legislature, relating to the remittance of twenty per cent of any balance in any year of the proceeds of said taxes contemplated by said resolution, to the board of county commissioners of any county for use on roads and bridges therein, provides, and the same shall be construed to provide, in the event said Resolution is adopted at the general election in 1942, that such funds shall be expended by the board of county commissioners of any such county for road and bridge purposes within the county, unless there exists a board of bond trustees or other authority in such county which is now or hereafter authorized by law to have the power of constructing, maintaining and supervising the roads and bridges of such county, and in such case, such board of bond trustees or other authority shall have the power and authority to use and expend such remitted twenty per cent funds for road and bridge purposes in the county until otherwise provided by law and it shall be the duty of the board of county commissioners in any such county to make such remitted funds available to such board of bond trustees or other authority for use on the public roads and bridges of such county immediately upon their remittance.

HISTORY.—§1, ch. 20937, 1941.

208.44 Additional tax upon gasoline or other like products of petroleum.—

(1) Every dealer in gasoline or other like products of petroleum, under whatever name designated in this state, in addition to all other taxes required by law, shall pay an additional tax of one cent per gallon for every gallon of gasoline or other like products of petroleum under whatever name designated, sold by him on which the tax herein provided has not been paid, or the payment thereof has not been assumed by a person preceding him in the handling of said lot of products. Delivery shall be deemed to be made at the point of destination. This additional license tax of one cent per gallon on gasoline or other like products of petroleum, under whatever name designated, shall be paid to the comptroller monthly in the following manner: On or before the 25th day of each month, the dealer shall report under oath to the comptroller the number of gallons of such products sold by him during the preceding month, and shall at the same time pay to the comptroller the amount of license tax computed to be due. Such report shall show in detail the amount of gallons of such products sold and delivered in each county. The dealer may deduct from the amount computed to be due, such amount as may be allowed by law for his services and expenses in complying with the provisions of this section.

(2) If any dealer shall fail to make such report and payment to the comptroller as herein provided, on or before the 25th day of the month succeeding the month for which the license tax is due as herein provided, the comptroller shall thereupon estimate the amount of such products sold by such dealer during such month from such information as he may be able to obtain, and shall add ten per centum of the amount of such taxes, as estimated, as the penalty for the failure of such dealer to make such report or payment, and shall proceed to collect such taxes, together with all costs and obtain the same as delinquent railroad taxes are collected by law.

(3) The proceeds of said tax are hereby appropriated for public highway purposes in the manner following: The comptroller, after deducting his expenses of collection, shall monthly apply to said monthly collections the same ratio of distribution by which the two cents gasoline tax, known as the second gas tax, is prorated among the several counties under §16(a), Art. IX of the state constitution. The comptroller shall thereupon, monthly, remit the said respective distributive shares of each county as follows: Eighty per cent to the state road department for the construction, reconstruction, maintenance and repair of state roads and bridges within such county, for the lease or purchase of bridges connecting

state highways within such county, acquisition of rights of way for state roads within such county or for reduction of bonded indebtedness of such county or special road and bridge districts within such county incurred for road and bridge purposes. Provided, however, that the state road department shall expend such funds solely for such purposes or on such state roads as shall be designated by appropriate resolution of the board of county commissioners of such county; and twenty per cent to the board of county commissioners of such county who shall use said funds solely and only for the acquisition of rights of way, or the construction, reconstruction, maintenance and repair of roads and bridges therein, or reduction of bonded indebtedness as aforesaid. Provided, however, that in the event that the powers and duties relating to roads and bridges usually exercised and performed by boards of county commissioners are exercised and performed by some other or separate county board, then and in such event such other or separate county board shall receive the proceeds and exercise the powers and perform the duties designated in this section to be done by the boards of county commissioners.

(4) The gasoline inspection laws of the state shall be and they are hereby declared to be applicable to the enforcement of this section.

(5) Any person, firm, corporation or association violating any of the provisions of this section, for the first offense shall be guilty of misdemeanor, and shall be punished accordingly, and for the second or further offense shall be fined not more than five thousand dollars, and in addition thereto, it shall be the discretion of the comptroller to revoke the dealer's license, and the proceeds of all fines and penalties imposed hereunder, less the costs, shall be paid into the county depository to the credit of the fine and forfeiture fund in the county where the conviction was had.

Provided, however, that the penalty provided in this subsection may be in addition to those provided for in subsection (2) of this section.

(6) The term "dealer" as used herein, or in any proceedings under this section, shall be deemed and taken to mean any person, firm, corporation or association engaged in the business of selling in this state such of the products covered by this section as have been divested of their interstate character, and the taxes herein imposed on the quantity of such products sold in this state shall be collected only once, and that, after the same has lost its interstate character.

(7) Each dealer, when selling to any other dealer any of the products herein taxed, shall render an invoice of such

shipment to the purchaser, and such invoice of the dealer so selling shall plainly state whether or not the tax herein required will be reported and paid by him, and the purchaser, so buying and receiving such products may, in making his report to the comptroller, fully rely upon the statement so made in such invoice.

(8) Each wholesale dealer in gasoline or other like products of petroleum, when making his report to the comptroller of the amount of such products sold in this state, upon which the tax herein provided is due and payable by him to the comptroller of the state, for the use of the state, at the same time shall report to the comptroller each and every sale made by such dealer of any quantity of gasoline or other like products of petroleum which shall not have been at the time of such sale divested of its interstate character, which report shall show the name and business location of the person, firm, corporation or association to whom the same is sold in this state. Every dealer shall, at the same time other reports are required to be made to the comptroller, report to the comptroller each and every purchase of such products made by said dealer upon which the tax is shown on the invoice thereof to have been assumed, reported and paid by the dealer selling to him.

(9) The license tax herein levied shall be in addition to all other license taxes levied under the laws of the state, and in addition to the dealer's license tax for each place of business levied under the provisions of the laws of the state.

(10) If any dealer shall collect from another upon an invoice rendered the license tax herein contemplated, and shall fail to report and pay the same to the comptroller as herein provided, he shall be deemed to be guilty of embezzlement of funds, the property of the State of Florida, and upon conviction shall be punished as if convicted of larceny of a like sum.

(11) It is the intent of this section that the effect hereof shall be to correspondingly increase the gasoline storage tax imposed by chapter 13756, acts of 1929, as provided by §9 of said act, as brought forward and revised in §208.23 to §208.28 inclusive, so as to equalize the gasoline gallonage storage tax with the gallonage sales tax.

(12) It is hereby expressly recognized and declared by the legislature that all public roads and bridges, being constructed or built, or which will be hereafter constructed or built, including the acquisition of rights of way as incident thereto, either by the state road department, or the several counties of the state, were, are and will be, constructed and built as general public projects and undertakings, and that the cost of the construction and building thereof including the acquisition of rights of way as incident thereto, was, is

and will be, legitimate proper state expense incurred for a general public and state purpose. And it is expressly recognized and declared that the construction, reconstruction, maintenance and acquisition of rights of way of all secondary roads are essential to the welfare of the state, and that such roads when constructed, or reconstructed or maintained, or such rights of way when acquired, are and will be for a general public and state purpose. And, the legislature has found and hereby declares that for the proper and efficient construction and maintenance of public highways designated state roads, it is in the best interest of the state to further integrate the activities of the state road department and the several boards of county commissioners as provided in subsection (3) in order that both state and local highway needs may be adequately provided for.

(13) This section shall not repeal any law, or parts of laws, relating to the levying of any state license taxes or other state taxes upon gasoline or other like products of petroleum, with exception of chapter 25266, acts of 1949, provided, however, that no municipality or other political subdivision shall levy or collect any "gasoline tax" or other tax measured or computed by the sale, purchase, storage, distribution, use, consumption, or other disposition of gasoline or other like products of petroleum except such municipalities as are now levying such a tax under authorization of special laws; provided, further, that nothing herein shall prevent the levying by municipalities, or other political subdivisions, of reasonable flat license fees or taxes upon the business of selling gasoline or other like products of petroleum at wholesale or retail.

(14) This section shall take effect November 1, 1949. In the event of invalidity or ineffectiveness for any reason, of subsection (3) or (12) or of both such subsections of this section, the comptroller shall hold in a separate fund in the state treasury, all monies derived from the tax imposed by this section and such proceeds shall not be expended for any purpose, but shall be held as aforesaid until appropriated by act of the legislature in future session.

(15) It is declared to be the legislative intent that the funds derived from this section shall be used in such manner and for the purposes aforesaid to reduce the burden of ad valorem taxes in the several counties.

(16) This section may be known and cited as "secondary roads assistance act of 1949."

HISTORY.—§§1-11, 13, 14, ch. 20228, 1941; §§1-11, 13, 14, ch. 21639, 1943; §§1-11, 13, 14, ch. 22822, 1945; am. §§1-14, ch. 24172, 1947.
Am. §§1-14, ch. 25266, 1949.

Former section was of two year duration, thus expiring. Present section was enacted by the 1949 special session as ch. 26321 and is compiled from §§1-12, 14, 16-18 expressly repealed by ch. 26321.
of such chapter. Chapter 25266, which was enacted at the 1949 regular session is

208.45 Certain sales to United States tax exempt; rules and regulations.—

(1) Each and every dealer in gasoline or other like products of petroleum by whatsoever name designated shall be exempt from the payment of any and all excise taxes upon gasoline or other like products of petroleum sold by such dealer in the state to the United States, its departments, agencies and instrumentalities when such gasoline or other like products of petroleum is sold and delivered by such dealer in bulk lots of not less than five hundred gallons in each delivery to and for the exclusive use by the United States, its departments, agencies and instrumentalities.

(2) The term "exclusive use by the United States, its departments, agencies and instrumentalities" shall be construed to mean the consuming by the United States, its departments, agencies and instrumentalities of the gasoline or other like products of petroleum in equipment, devices or motors owned and operated by the United States, its departments, agencies or instrumentalities, and operated by contract flying schools training cadet aviators for the United States air force under contract whereby the United States reimburses the contract flying school for the gasoline so used.

(3) The term "exclusive use by the United States, its departments, agencies or instrumentalities" shall be further construed to specifically exclude the use of such gasoline and other like products of petroleum by any person, firm or corporation, whether operating under contract with the United States, its departments, agencies, and instrumentalities" shall the original purchase by whom from a dealer in gasoline or other products of petroleum in this state would have rendered such dealer liable for the payment of excise taxes upon such gasoline and other like products of petroleum under the laws of the state.

(4) The above definitions of the term "exclusive use by the United States, its departments, agencies, and instrumentalities" shall in nowise be construed to be the sole meaning intended by the use of such term in this section, but such term shall be given its ordinary and usual meaning in all instances not specifically mentioned herein, and the enumeration of the above definitions shall be construed as an extension of the ordinary and usual meaning of the term "exclusive use."

(5) The comptroller of the state shall promulgate such rules and regulations and shall prescribe such forms as shall be necessary to effectuate and enforce the purposes of this section.

(6) If any subsection, provision, or clause of this section shall be declared to be invalid or unconstitutional and such

invalidity or unconstitutionality shall have the effect of defeating or striking down the attempted exemption it shall not affect the operation or validity of other statutes of the state providing for the taxation of every gallon of gasoline sold in the state, it being hereby declared to be the legislative intent to grant exemption from taxation under conditions set forth in subsection (1) only in the event and to such extent that such exemption is lawful and constitutional; and it is further declared to be the legislative intent that if any subsection, provision or clause of this section shall be declared to be invalid or unconstitutional and such declaration shall have the effect of defeating or striking down the attempted exemption that then and in such event the dealers and distributors of gasoline or other like products of petroleum shall pay each and every excise tax levied upon every gallon of gasoline sold in the state.

HISTORY.—§§1-3, 5, ch. 21757, 1943; am. §1, ch. 22801, 1945; am. §§1-3, ch. 23676, 1947; §11, ch. 25035, 1949.

Sub. §(2), am. §1, ch. 28191, 1953.

Section 208.46 Repealed.—(By Section 7, Chapter 29615, Acts of 1955)

208.47 Definitions for §§208.48-208.63.—For the purposes of §§208.48-208.63 the following words and terms when used herein shall have the following meanings:

- (1) "Motor fuel" means motor fuel as defined in §207.01.
- (2) "Distributor" means distributor as defined in §207.01.
- (3) "Comptroller" shall mean the comptroller of the state.
- (4) "Public highways" means public highways as defined in §207.01.

- (5) "State" means the State of Florida.

(6) "Agricultural Purposes" as used in §§208.48-208.63, Florida Statutes, shall be construed to mean motor fuel used in any tractor, vehicle, or other farm equipment which is used exclusively on a farm or for processing farm products on the farm, and no part of which is used in any vehicle or equipment driven or operated upon the public roads, streets, or highways of this state; provided, that this restriction shall not apply to the movement of farm vehicles or farm equipment between farms, provided further, that the transporting of bees by water and the operating of equipment used in the apiary of a beekeeper shall be also deemed an agricultural purpose.

(7) "Commercial fishing purposes" as used in §§208.48-208.63 shall be construed to mean motor fuel used in the operation of boats, vessels, and equipment used exclusively

for the taking of fish, crayfish, oysters, shrimp, and sponges from the salt and fresh waters under the jurisdiction of the state for resale to the public, but shall in no way be construed to include sports or pleasure fishing, and no part of which is used in any vehicle or equipment driven or operated upon the public roads, streets, or highways of this state.

HISTORY.—§2, ch. 28098, 1953; sub §(6), am. §1, ch. 29913, 1955, superseded by §1; ch. 29916, 1955.

208.48 Refunds on fuel used for agricultural or commercial fishing purposes; limitation; claims.—Any person who shall use any motor fuel for agricultural purposes and commercial fishing purposes, on which the tax, as imposed by chapter 208, has been paid shall be entitled to a refund of the state tax except the two cents per gallon motor fuel tax known as the "second gasoline tax" and the seventh cent gas tax as provided by §208.44; provided, however, that no refund shall be authorized unless sworn applications therefor containing such information as the comptroller may determine shall be filed with him not later than January 31 immediately following the year for which refund is claimed, and provided, further, that no refund shall be authorized for purchases of less than twenty-five gallons at any one time; and further provided that no refund shall be authorized unless the amount due is for five dollars or more in any twelve months period.

HISTORY.—§2, ch. 28098, 1953; §2, ch. 29916, 1955.

208.49 Powers and duties of comptroller.—

(1) The comptroller shall make such rules and regulations as are necessary to enforce the provisions of §§208.47-208.63.

(2) Agents of the comptroller are authorized to go upon the premises of any permit holder or of any licensed motor fuel dealer or his duly authorized agent as defined in this law to make inspection to ascertain any matter connected with the operation of §§208.47-208.63 or the enforcement thereof; provided, however, that no agent shall enter the dwelling of any person without the occupant's consent or the authority from the court of competent jurisdiction.

(3) The comptroller is hereby authorized to employ such additional persons, and incur travel, rental, and other current and capital expenses necessary properly to accomplish the purpose of §§208.47-208.63 and to protect the motor fuel tax revenues of the state and to that end may call upon any state or local law enforcing agency to assist in enforcing the provisions of this law.

HISTORY.—Comp. §§2, 10, 12, ch. 28098, 1953.

208.50 Permit for refunds required; procedure for issuance; bond.—

(1) No person shall secure a refund of tax under §208.48 unless such person is the holder of an unrevoked refund permit issued by the comptroller before the purchase of the motor fuel, which permit shall be numbered and issued annually, and which shall entitle such person to make application for a refund under §§208.47-208.63.

(2) To procure a permit every person shall file with the comptroller an application, on forms furnished by the comptroller, stating that he is engaged in the business of farming or commercial fishing and that he intends to file an application for refund for the current calendar year, and shall furnish the comptroller such other information as the comptroller shall request.

(3) No person shall, in any event, be allowed a refund unless he has filed the application provided for above with comptroller. The permit shall be effective on the date issued by the comptroller.

(4) The comptroller may, if applicant for a refund permit has violated any provision of §§208.47-208.63 or regulation pursuant thereto, or has been convicted of bribery, theft, or false swearing within the period of five years preceding the application, or if the comptroller has evidence of the applicant's financial irresponsibility, require the applicant to execute a corporate surety bond of one thousand dollars to be approved by the comptroller conditioned upon the payment of all taxes, penalties, and fines for which such applicant may become liable under §§208.47-208.63.

HISTORY.—§§3, 9, ch. 28098, 1953; §3, ch. 29916, 1955.

208.51 Permit numbers; tax refund blanks.—The comptroller shall annually assign each permit holder a new file number and shall issue to him a book containing blank motor fuel tax refund invoices numbered consecutively and furnish the permit holder with blank motor fuel tax refund applications.

HISTORY.—§4, ch. 28098, 1953; §4, ch. 29916, 1955.

208.52 Sales; quantities limited; invoices required, requirements.—

(1) When motor fuel is sold to a person who shall claim the be entitled to refund under §208.48, the seller of such motor fuel shall make out in duplicate a motor fuel invoice which invoice shall contain the following information:

(a) The permit number of the buyer;

(b) The name, post office and resident address of the purchaser;

(c) The name of the agent or employee actually making the purchase, if any;

(d) The number of gallons purchased;

(e) The date on which purchase was made and place of delivery;

(f) The price paid for such refund motor fuel;

(g) The name and place of business of the seller of the refund motor fuel.

(2) The invoice shall show thereon such other information as the comptroller may require. The responsibility for correct information shall be upon the buyer, the seller only to fill in quantity purchased, price, date of purchase, his name and place of business.

(3) The original of such motor fuel invoice shall be retained by the purchaser for attachment to his application for refund as a part thereof. No refund shall be allowed unless the seller executes such invoices.

(4) Each invoice shall be signed by the purchaser and seller or their duly authorized agents. The seller or his employee shall not sign the invoice for the purchaser. The comptroller may require that the signatures of all refund claimants or their agents shall be on file in his office and may refuse to grant refund if the invoice does not have affixed thereon such filed signature. He may also refuse to grant a refund if the invoice in any particular is incomplete and fails to contain the full information required under §§208.47-208.63.

(5) Refund motor fuel shall not be sold or delivered in quantities of less than twenty-five gallons.

(6) No person shall execute a motor fuel invoice, as described in subsection (1), who is not a distributor, as defined in §207.01, or a jobber, agent, consignee or bailee duly authorized by a licensed distributor, to execute motor fuel invoices as his agent. No refund invoices shall be executed for purchases from retail filling stations, except that the comptroller shall have authority to designate certain retail stations as agents of distributors where no distributors are available to serve commercial fishermen.

HISTORY.—§§5, 10, 12, ch. 28098, 1953; sub §(6) am. §5, ch. 29916, 1955.

208.53 Refund claim application forms.—The refund permit holder shall file with the comptroller an application for refund on forms furnished by the comptroller which shall contain blanks for listing:

(1) The quantity of motor fuel used on which refund is claimed;

(2) The name, post office and resident address of the purchaser;

(3) The amount of tax claimed to be refunded;

(4) The number of gallons purchased;

(5) That the same has been used exclusively by the purchaser for his own use;

(6) An oath that no part of said refund motor fuel has been sold, or used on the public roads, streets, or highways of this state;

(7) The quantity of refund motor fuel used in machines and equipment listed in claimant's application for refund;

(8) The quantity of motor fuel on hand at the beginning and the quantity of motor fuel on hand at the end of the period for which refund is claimed;

(9) The quantity of motor fuel used on which no refund claim is made;

(10) The name and address of the seller from whom the refund motor fuel was purchased, and

(11) Such other information as the comptroller shall require.

HISTORY.—§6, ch. 28098, 1953; sub § (7) am. §6, ch. 29916, 1955.

208.54 When refund claims allowed; procedure; right of refund nonassignable, exception; fee.—

(1) When the comptroller is satisfied that a refund is proper he shall authorize the amount of the state motor fuel tax paid except the two cents per gallon motor fuel tax known as the "second gasoline tax" and the seventh cent gas tax as provided by §208.44, to be refunded as other refunds are made; and the amount shall be refunded and deducted by him from current motor fuel tax receipts in his possession. Such refunds shall be allowed only on motor fuel purchased in quantities of twenty-five gallons, or more, and used in machines, boats and equipment listed by the claimant in his application for refund.

(2) The right to receive any refund under the provisions of this section shall not be assignable, except to the executor or administrator, or to the receiver, trustee in bankruptcy, or assignee in insolvency proceedings of such person entitled thereto.

(3) Claims shall be paid annually on a calendar year basis. Claims shall be filed not later than January 31 immediately following the year for which refund is claimed.

(4) The comptroller shall deduct a fee of two dollars for each claim, which two dollars shall be deposited in the general revenue fund.

HISTORY.—§§2, 6, ch. 28098, 1953; §7, ch. 29916, 1955.

208.55 Appropriation for payment of claims.—The annual claims to be refunded shall not exceed five hundred thousand dollars which amount shall be withheld from gasoline tax revenues available for the purpose of refund under §§208.47-208.63. In event claims exceed this amount the comptroller shall reduce such refunds proportionally so that each claim shall receive the same percentage reduction.

HISTORY.—Comp. §2, ch. 28098, 1953.

208.56 Erroneous refunds.—If any excise taxes on motor fuel be erroneously refunded the comptroller shall advise the payee by registered mail of the erroneous refund. If the payee fails to reimburse the state within fifteen days after the receipt of the letter, an action may be instituted by the comptroller against such payee in the circuit court and the comptroller shall recover from the payee the amount of the erroneous refund plus a penalty of twenty per cent.

HISTORY.—Comp. §8, ch. 28098, 1953.

208.57 Records of sales and purchases of motor fuel under refund permit.—

(1) Each licensed distributor shall, in accordance with the comptroller's requirements, keep at his principal place of business in this state, or at the bulk plant where the sale is made, a complete record or duplicate sales tickets of all such motor fuel sold by him under motor fuel refund invoices provided for in §208.53, which records shall give the date of each such sale, the number of gallons sold, the name of the person to whom sold, the sale price and the purchaser's permit number. No licensed distributor or his agent or employee shall acknowledge or assist in the preparation of any claim for tax refund.

(2) Every person to whom a refund permit has been issued under the act shall, in accordance with the comptroller's requirements, keep at his residence or principal place of business in this state a record of each purchase of motor fuel from a licensed distributor or the distributor's authorized agent, the number of gallons purchased, the name of the seller, the date of the purchase and the sale price.

(3) The records required to be kept under subsections (1) and (2) of this section shall at all reasonable hours be subject to inspection by the comptroller or by any person duly authorized by him. Such records shall be preserved

and shall not be destroyed until one year after the date the motor fuel to which they relate was sold or purchased.

HISTORY.—Comp. §7, ch. 28098, 1953.

208.58 Comptroller's records of refunds open to public.—

The comptroller shall keep a permanent record of the amount of refund claimed and paid to each claimant. Such records shall be open to public inspection.

HISTORY.—Comp. §9, ch. 28098, 1953.

208.59 False information in permit or refund application.

—No person shall knowingly make a false or fraudulent statement in an application for a refund permit or in a motor fuel refund invoice, or in an application for a refund of any taxes under this law; or fraudulently obtain a refund of such taxes; or knowingly aid or assist in making any such false or fraudulent statement or claim; or having bought motor fuel or any part thereof to be used for any person other than as provided in §208.48.

HISTORY.—Comp. §9, ch. 28098, 1953.

208.60 Revocation, suspension of refund permit.—

(1) The refund permit of any person who shall violate any provision of §208.59 shall be revoked by the comptroller and may not be reissued until two years have elapsed from the date of such revocation, and such person, whether or not his permit has been revoked by the comptroller shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than two hundred dollars nor more than five hundred dollars, or imprisoned for a term of not less than thirty days nor more than six months, or both in the discretion of the court.

(2) The refund permit of any person who shall violate any provision of §§208.47-208.63, other than those contained in §208.59, may be suspended by the comptroller for any period in his discretion not exceeding six months.

HISTORY.—Comp. §9, ch. 28098, 1953.

208.61 Same; hearing required. — If the comptroller reasonably believes that any refund permit holder has been guilty of a violation of §§208.47-208.63, which would subject the permit holder to a suspension or revocation of his permit under the provisions of §§208.51(5) or 208.60, said permit holder may be cited to show cause at a public hearing before the comptroller why his permit should not be suspended or revoked. The permit holder shall be notified by registered letter or summons. The letter or summons shall inform the permit holder of the charge or charges made against him and he shall have a reasonable opportunity to be heard before his permit may be revoked or suspended. The summons may be

served in the same manner and by the same officer or person as provided by law, or it may be served in said manner by an employee of the department. The hearing shall be set at least five days after the summons is served or the letter delivered.

HISTORY.—Comp. §11, ch. 28098, 1953.

208.62 Appropriation for administration.—All fees collected under §§208.47-208. are hereby appropriated to the comptroller for the purpose of defraying the cost of administering §§208.47-208.63.

HISTORY.—Comp. §12, ch. 28098, 1953.

cf.—§208.50 (1) Fees deposited in general revenue fund.

§208.55 Appropriation for payment of refunds.

208.63 Violations by persons other than refund permit holders.—Any person other than the holder of a refund permit, who shall knowingly violate any provision of §§208.47-208.62, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned not exceeding six months, or both in the discretion of the court.

HISTORY.—Comp. §9, ch. 28098, 1953.





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